

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----	x	
AXIS REINSURANCE COMPANY,	:	Adv. Proc. No. 07-01712 RDD
	:	(Reference Withdrawn:
Plaintiff,	:	Case No. 08-cv-03242 (GEL))
v.	:	
	:	
PHILLIP R. BENNETT, et al.,	:	
	:	
Defendants.	:	
-----	x	
AXIS REINSURANCE COMPANY,	:	Case No. 07-cv-07924 (GEL)
	:	
Plaintiff,	:	
v.	:	
	:	<i>Electronically Filed</i>
PHILLIP R. BENNETT, et al.,	:	
	:	
Defendants.	:	
-----	x	

**REPLY DECLARATION OF PAMELA SYLWESTRZAK  
IN FURTHER SUPPORT OF MOTIONS FOR  
SUMMARY JUDGMENT AGAINST AXIS REINSURANCE COMPANY**

I, PAMELA SYLWESTRZAK, hereby declare:

1. I am a Senior Vice President of Marsh USA, Inc. ("Marsh") and I respectfully submit this reply declaration in further support of the motions of various insureds, made pursuant to Fed. R. Civ. P. 56, for entry of summary judgment against Axis Reinsurance Company ("Axis"). This declaration is based on my personal knowledge and my review of certain documents in Marsh's files.

2. As I stated in paragraphs 8 -11 of my prior declaration, dated March 27, 2008, the letter dated January 14, 2005, executed by Refco's Phillip Bennett on or about January 21, 2005 (the "Warranty Letter"), which was attached as Exhibit E to my prior declaration, was explicitly requested by Axis, and was supplied by Refco Group Ltd. LLC, solely in connection with the Axis 2004-2005 Policy.

3. According to Marsh's files, Marsh transmitted the Warranty Letter to Steven Kane at Axis via email on January 25, 2005. I was copied on that January 25, 2005 email. A true and accurate copy of the email, dated January 25, 2005, transmitting the Warranty Letter to Mr. Kane at Axis, is attached hereto as Exhibit M.

4. Marsh provided the policy forms and endorsements for the U.S. Specialty 2005-2006 Policy to Axis long before Axis issued its August 11, 2005 Policy Binder. A true and accurate copy of the June 8, 2005 email from Marsh's James Schneider, sent to both Sean Lukac of Axis and to me, and attaching the U.S. Specialty quotation, main policy form and endorsements, is annexed hereto as Exhibit N.

5. Moreover, prior to issuing its final policy binder, dated August 11, 2005, Axis had already received U.S. Specialty's final policy binder, dated August 10, 2005, which made no reference to any inverted warranty or knowledge exclusion endorsement to the Primary Policy. A true and accurate copy of the August 10, 2005 e-mail from Marsh's Kenny Li, sent to Sean Lukac of Axis and forwarding U.S. Specialty's policy binder of the same date, is annexed hereto as Exhibit O.

6. To the best of my knowledge, at no time prior to the issuance of the Axis 2005-2006 Policy on March 1, 2006, did Axis ever request that U.S. Specialty add a Knowledge Exclusion to the Primary Policy, nor did Axis ever advise Marsh that Axis needed a Knowledge Exclusion in order to issue its policy.

7. I have also read the Affidavit of Steven Kane, dated May 1, 2008, submitted in opposition to the insureds' motions for summary judgment. Mr. Kane has misconstrued the meaning of my August 11, 2005 internal email to my colleague, Kenny Li. In that email, which is attached as Exhibit C to Mr. Kane's affidavit, I conveyed a copy of the application that Refco Group Ltd. LLC had submitted to U.S. Specialty in connection with the 2004-2005 Program (*i.e.*,

the “8/4/04 placement”), I advised Mr. Li that U.S. Specialty did not require a new application for the 2005-2006 Program (*i.e.*, “the 8/11/05 binding of the IPO”), and I brought to Mr. Li’s attention that Refco Group Ltd. LLC had not signed the warranty in the application it had submitted to U.S. Specialty in connection with the 2004-2005 Program and, as a result, that U.S. Specialty had added an inverted warranty endorsement to its 2004-2005 Policy.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: Chicago, Illinois  
May 22, 2008

/s/ Pamela Sylwestrzak  
Pamela Sylwestrzak

## **EXHIBIT M**

Matt  
Foran/CHI-IL/US/Marsh/MMC

01/25/2005 04:29 PM

To steven.kane@axiscapital.com

cc Pamela M  
Sylwestrzak/CHI-IL/US/Marsh/MMC@MMC,  
Robert A Kelly/CHI-IL/US/Marsh/MMC@MMC

bcc

Subject Refco - Warranty Letter

Hello Steven,

Attached please find the warranty letter per your subjectivity. We should have the underlying policies to you shortly.

Thanks,

Matt



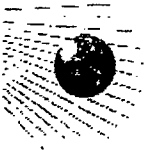
refco - axi warranty.pdf

Matt Foran  
Marsh USA, Inc.  
500 West Monroe  
Chicago, IL 60661  
312.627.6648  
matt.foran@marsh.com

All Recipients

To: steven.kane@axiscapital.com  
cc: Pamela M Sylwestrzak/CHI-IL/US/Marsh/MMC@MMC, Robert A Kelly/CHI-IL/US/Marsh/MMC@MMC  
From: Matt Foran/CHI-IL/US/Marsh/MMC

## **EXHIBIT N**



James C  
Schneider/NYC-NY/US/Marsh  
/MMC

06/08/2005 05:14 PM

To

cc Brad Kotlewski/NYC-NY/US/Marsh/MMC@MMC,  
Pamela M  
Sylwestrzak/CHI-IL/US/Marsh/MMC@MMC, Paul  
Huelbig/NYC-NY/US/Marsh/MMC@MMC

bcc bhuma.patel@ace-ina.com@internet  
mfisher@archinsurance.com@internet  
sean.lukac@axiscapital.com@internet Timothy R  
Molineux/HAM/BM/Marsh/MMC@MMC  
lgordon@chubb.com@internet  
thomas.ruck@cna.com@internet  
hank.toolan@xlgroup.com@internet  
mmoran1@stpaultravelers.com@internet  
jonathan.schmiegel@libertyiu.com@internet  
Gary Ella/LON/GB/Marsh/MMC@MMC  
jason.brown@aig.com@internet  
david.chin@aig.com@internet  
kadamson@quantaholdings.com@internet  
jason\_rubman@rlcorp.com@internet  
ronald.spencer@zurichna.com@internet  
frank.forde@aig.com@internet

Subject Refco Inc. (HCC Primary Quote) Need Excess  
Quotes ASAP

To All:

Attached below is HCC's primary \$10MM quote for REFCO's D&O. It is imperative that we receive quick feedback and quotes from the marketplace on this program. The IPO date is still firm for 6/15 and the client is looking to build potentially \$70MM in limits. This means we have 4 business days to secure and bind this entire program. I ask that all markets come in with their best pricing for the layer desired. The continuity date we are trying to match is 8/5/04.

I will be out of the office 6/9 and 6/10, but you can contact Brad Kotlewski at 212-345-4226. He has been copied on this email as well.

HCC has quoted the following terms:

- \$10MM limit
- \$500K retention
- \$320,000 in premium
- 12.5% commission

**Other Terms & Conditions**

- Quoted on U.S. Specialty Insurance Company paper (admitted)
- ERP is 1 year at 150% annual premium
- Includes non-entity EPL coverage
- E&O Exclusion with management carveback
- Investigative Cost Coverage Sublimit for derivative suits: \$250,000
- Subretention for non-SEC Claims: \$300,000
- Non Rescindable Side A
- Pollution Exclusion with Side A carveback
- BI/PD Exclusion with Side A carveback

We are still negotiating with HCC on the pricing which may end up being in the range of \$300K - \$320K. I have also listed a bunch of enhancements HCC is considering as well:

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2-Amend "A" side deductible from \$5k to -0-

3-Consider reducing all other retention to \$ 250,000 and the SEC retention to \$350,000?

4-Address on policy will be NY address and not Chicago so the Illinois Amendatory shouldn't be on there. Please send a copy of any applicable NY amendatory endorsements and we'll need to review them.

5-Potential carveback for SEC and Side A on E&O exclusion?

6-Bi-lateral Discovery @ 100% AP?

7-Add Risk Manager and General Counsel as Insureds.

8-Add employed Lawyers Endorsement (sample AIG endorsement attached) - No sublimit.



AIG EMPLOYED LAWYERS LEGAL MALPRACTICE EXTENSION - SUBMITTED.doc

9-Amend definition of Claim to include: "in the case of an investigation by the SEC or a similar state or foreign government authority, after the service of a subpoena upon such **Insured Person**."

10-Definition of Loss to include: " civil penalties assessed against any **Insured Person** pursuant to Section 2(g) (2)(C) of the Foreign Corrupt Practices Act, 15 U.S.C. § 78dd-2(g)(2)(C)"

11-Severability of Exclusions amended to simply read: The act or knowledge of an Insured Person shall not be imputed to any other Insured Person.

12-Severability of Application to read: "No statement in the application or knowledge possessed by any of the Insured Persons shall be imputed to any other Insured Person for the purpose of determining if coverage is available under Insuring Clause A. The statements in the application made by and knowledge possessed by each Insured Person shall be imputed to the Company for the sole purpose of determining if coverage is available under Insuring Clause B (1) with respect to Claims against such Insured Person, but shall not be imputed to the Company with respect to Claims against other Insured Persons. Knowledge possessed by the signor of the application shall be imputed to the Company with respect to Coverage under Insuring Clause (B) (2).

13-Defense Costs to include pre and post judgement interest.

14-Backdated P&P Litigation Exclusion (6/4/04)

15-CONDITIONS. (F) Changes in Control (c) should be deleted in its entirety. The policy should not go into run-off or cancel in the event of bankruptcy. Also, Clause (2) (b) of Conditions (F) should be deleted.












The quote, policy form, and all endorsements are attached below for everyone's review. Please let us know your thoughts after you have had a chance to review.

Thanks,  
Jim

James C. Schneider  
Assistant Vice President  
Marsh USA Inc.  
1166 Avenue of the Americas



New York, NY 10036  
Phone: 212-345-5329  
Fax: 212-345-9418  
Email: james.c.schneider@marsh.com

-  - Attachment.rtf
-  - NEW USSIC public policy 991(03-2004).doc
-  - IL USSIC PR 1117C-IL.doc
-  - 991-301 EPL - non-entity (Public).doc
-  - 991-412 EO exclusion with management carveback.doc
-  - 991-442 Amend Poll. Excl. - A-side carveback (Public).doc
-  - 991-444 Amend BIPD Excl - A-side carvebk (Public).doc
-  - 991-804 Derivative Demand Investigation Cost Cov Sublimit.doc
-  - 991-830 Subretention for non-SEC claims.doc
-  - 991-861 Non-Rescindable - A-Side Only - Absolute (Public).doc
-  - IL USSIC PR 1117C-IL.doc

**All Recipients**

**To:**  
**cc:** Brad Kotlewski/NYC-NY/US/Marsh/MMC@MMC, Pamela M Sylwestrzak/CHI-IL/US/Marsh/MMC@MMC,  
Paul Huelbig/NYC-NY/US/Marsh/MMC@MMC  
**From:** James C Schneider/NYC-NY/US/Marsh/MMC

## **EXHIBIT O**



Kenny  
Li/NYC-NY/US/Marsh/MMC  
08/10/2005 04:27 PM

To  
cc  
bcc frank.forde@aig.com jerome.brendle@awac.com  
sean.lukac@axiscapital.com  
mfisher@archinsurance.com  
carla.waller@xlgroup.com  
Hank.Toolan@xlgroup.com  
Subject Fw: Refco Inc. - Primary Binder

Please see the attached primary binder.

kl

---

Kenny Li  
Marsh USA Inc.  
Private Equity and Mergers & Acquisitions Svcs.  
1166 Avenue of the Americas - 38th Floor  
New York, NY 10036  
Phone: 212-345-1989 Fax: 212-345-8491  
Email: Kenny.Li@marsh.com

---

— Forwarded by Kenny Li/NYC-NY/US/Marsh/MMC on 08/10/2005 04:09 PM —



SMCQUILLEN@HCC-Global.  
com@Internet  
Sent by:  
SMCQUILLEN@hcc-global.co  
m

08/10/2005 04:07 PM

To James C  
Schneider/NYC-NY/US/Marsh/MMC@MMC,  
Kenny Li/NYC-NY/US/Marsh/MMC@MMC  
cc erush@HCC-Global.com@Internet,  
JGEORGE@HCC-Global.com@Internet  
Subject Refco Inc. - Primary Binder

Following your conversations and correspondence with Eric Rush on the above referenced account, and at his request, enclosed herewith please our binder. An executed copy will be faxed to your attention separately. Should you have any questions or if you require anything additional, please do not hesitate to contact our office.

For clarification please note that payments should be remitted to either address below as follows:

Via Overnight Mail:  
Webster Bank  
Attn: Lockbox Department  
436 Slater Road  
New Britain, CT 06053

Via Regular Mail:  
HCC Global Financial Products LLC  
Dept 630  
P.O. Box 150473  
Hartford, CT 06115-0473

Regards  
Sue

Suzanne McQuillen  
HCC Global Financial Products  
111 Pavonia Avenue, Suite 1201  
Jersey City, NJ 07310  
Phone: 201-216-1136  
Fax: 201-216-1225  
<<USPUPRBN.PDF>>

Suzanne McQuillen

HCC Global Financial Products  
A subsidiary of HCC Insurance Holdings, Inc.

Mailto:SMCQUILLEN@HCC-Global.com  
Tel: (201) 216-1136

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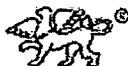
- USPUPRBN.PDF

**All Recipients**

To: James C Schneider/NYC-NY/US/Marsh/MMC@MMC, Kenny Li/NYC-NY/US/Marsh/MMC@MMC  
cc: erush@HCC-Global.com@Internet, JGEORGE@HCC-Global.com@Internet  
From: SMCQUILLEN@hcc-global.com@Internet

**All Recipients**

To:  
cc:  
From: Kenny Li/NYC-NY/US/Marsh/MMC



**HCC Global Financial Products**

111 Pavoria Avenue  
Suite 1201  
Jersey City, NJ 07310  
United States of America  
Tel: +1 (201) 216-1136  
Fax: +1 (201) 216-1225  
www.hcc-global.com

*via facsimile (212) 345-8491*

August 10, 2005

James C. Schneider  
Marsh, Inc. of NY, NY  
1166 Avenue of the Americas  
New York, NY 10036

Re: Refco Inc.  
Directors and Officers Liability

Dear James:

HCC Global Financial Products is pleased to present the following confirmation of binding on behalf of U.S. Specialty Insurance Company (Form USSIC 991 (03/2004)):

- ITEM 1. Name And Principal Address:**  
Refco Inc.  
550 W. Jackson Blvd. Suite 1300  
Chicago, IL 60661
- ITEM 2. Policy Number:** 24-MGU-05-A10821
- ITEM 3. Policy Period:** (a) Inception Date: 8/11/2005  
(b) Expiration Date: 8/11/2006  
at 12:01 a.m. at the Principal Address stated in ITEM 1.
- ITEM 4. Limit of Liability (Inclusive of Defense Expenses):**  
\$10,000,000 Limit of Liability (inclusive of defense expenses)
- ITEM 5. Retentions:**  
\$ 0 per Insured Person each claim under Insuring Agreement (A)  
\$300,000 each claim under Insuring Agreement (B1)  
\$500,000 each claim under Insuring Agreement (B2)
- ITEM 6. Premium:** \$395,000.00

Page 1 of 3

Confidential  
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**ITEM 7. Endorsements Effective at Inception:**

80016 - Terrorism Coverage (premium allocated: included in premium below)  
991-301 - Non Entity EPLI  
991-302 - Amend Definition of Insured Person to add Specific Individual: Insurance Manager and General Counsel.  
991-319 - Amend Definition of Loss to Include Pre-judgement Post-judgement interest  
991-322 - Employed Lawyers Extension w/ Co-Def Requirement, Separate Limit and Retention: \$1mm sub-limit.  
991-412 - E&O Exclusion with Management Carveback  
991-415 - Specific Litigation Exclusion: McElwreath Case  
991-442 - Amend Pollution Exclusion A-Side Carveback  
991-444 - Amend Exclusion (c) (BI/PD, etc) - A Side Carveback  
991-701 - Full Severability  
991-804 - Investigative Cost Coverage Sublimit for Derivative Suits: \$250,000  
991-830 - Separate Retention for Securities Claims Under Insuring Agreement (B)(1) - \$300,000  
991-861 - Non-Rescindable A-Side Only-Absolute  
991-876 - Specific Event(s) Exc. - Wells Notice/SEC Investigation  
Illinois Amendatory - USSIC 1117C-IL  
MANU - Controlling Shareholder coverage for Philip Bennett only

**ITEM 8. Discovery:** An optional extension period of 365 days will be available for 150% of the total premium paid.

**ITEM 9. Commission:** 12.5%

**Contingencies:**

**Please note that this binder is contingent upon all of the following:**

- The fully executed Terrorism Disclosure Notice.
- A copy of the Final Prospectus.
- Payment of the premium by the date indicated on the attached invoice

**Failure to meet these contingencies may result in coverage being cancelled or voided ab initio.**

Sincerely,

Jordan George on behalf of Eric Rush  
(201) 216-1195  
erush@hcc-global.com



**HCC Global Financial Products**

111 Pavonia Avenue  
Suite 1201  
Jersey City, NJ 07310  
United States of America  
Tel: +1 (201) 216-1136  
Fax: +1 (201) 216-1225  
www.hcc-global.com

August 10, 2005

Marsh, Inc. of NY, NY  
1166 Avenue of the Americas  
New York, NY 10036

## INVOICE

**PLEASE REMIT YOUR PAYMENT TO:**

*Please note our new remit to address:*

**Via Overnight Mail:**

Webster Bank  
Attn: Lockbox Department  
436 Slater Road  
New Britain, CT 06053

**Via Regular Mail:**

HCC Global Financial Products - (5405AA)  
Dept 630  
P.O. Box 150473  
Hartford, CT 06115-0473

Policy No.:	24-MGU-05-A10821
Policy Name:	Refco Inc.
Effective - Expiration Dates:	8/11/2005 to 8/11/2006
Insurer:	U.S. Specialty Insurance Company
Broker:	James C. Schneider
Commission Percentage:	12.5%
Total Premium:	\$395,000.00
Taxes and/or Assessments:	\$ N/A (not applicable for all states)
<b>Net Due:</b>	<b>\$345,625.00</b>
<b>Payment Due Date:</b>	<b>9/10/2005</b>

Please remit full amount by the date indicated above. Failure to do so may result in coverage being cancelled or voided ab initio. Please feel free to contact our office at (201) 216-1195 with any questions regarding this remittance.